

Internal Revenue Service

Department of the Treasury
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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-151976-09

Date: MAY 19, 2010

Re:

Legend

Decedent =

Personal Representatives =

CPA =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter from your authorized representative, dated September 21, 2009, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an alternate valuation election under § 2032 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1, and the Personal Representatives of Decedent's estate timely filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return on Date 2. The Personal Representatives hired CPA to prepare Form 706. The CPA prepared the Form 706 without considering the alternate valuation election under § 2032. The error was discovered on Date 3, more than 18 months after the due date (including extensions) of the Form 706.

Section 2032(a) provides, in part, that the value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

- (1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property

PLR-151976-09

shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

Section 2032(c) provides that no election may be made under § 2032 with respect to an estate unless such election will decrease (1) the value of the gross estate and (2) the sum of the tax imposed by chapter 11 and the tax imposed by chapter 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

Section 2032(d)(1) provides that an election under § 2032 shall be made by the executor on the return of tax imposed by chapter 11. Under § 2032(d)(2), no election may be made under § 2032 if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return.

Section 20.2032-1(b)(3) of the Estate Tax Regulations provides that a request for an extension of time to make the § 2032 election pursuant to §§ 301.9100-1 and 301.9100-3 will not be granted unless the estate tax return is filed no later than 1 year after the due date of the return (including extensions to time actually granted).

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

PLR-151976-09

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the estate does not satisfy the requirements of § 2032(d)(2) because the election was not filed within 1 year of the due date of the return. Accordingly, we cannot grant an extension of time to make the alternate valuation election under § 2032.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

The ruling in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Lorraine Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

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